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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

In re:	)	Case No. 97-3-0007-TTC
	)	Chapter 7
JASON EDWARD PEARDON	)	
and MARLA JAYDEEN PEARDON,	)	
a/k/a MARLA JAYDEEN CHAPMAN,	)	
	)	
Debtors.	)	
_____	)	
ANNE MARIE PEARDON,	)	Adv. No. 97-3-273-TC
	)	
Plaintiff,	)	
vs.	)	
JASON PEARDON,	)	<b><u>MEMORANDUM</u></b>
	)	
Defendant.	)	
_____	)	

The above-entitled nondischargeability action came to trial on April 20, 1998. Cathleen Cooper Moran appeared for Plaintiff. Noell K. Kubota appeared for Debtor/Defendant Jason Peardon (Debtor). For the reasons stated below, judgment will be entered for Plaintiff.

The relevant facts are simple. Plaintiff and Debtor divorced prepetition. Plaintiff was awarded custody of the couple's two children. Debtor engaged in an expensive and prolonged effort to wrest custody from Plaintiff. The state family court not only rebuffed Debtor's efforts to secure

**MEMORANDUM**

1 custody, it also ordered Debtor to pay Plaintiff \$33,500 for attorneys fees Plaintiff incurred in the  
2 proceedings. Shortly after the fee award, Debtor filed a chapter 7 petition. Plaintiff timely filed the  
3 present action seeking a determination that the fee award is nondischargeable. Debtor filed a  
4 counter-motion to avoid the judgment lien against his residence resulting from the fee award. See  
5 11 U.S.C. § 522(f). Debtor's counsel stipulated at trial that the motion to avoid lien should be  
6 denied to the extent the fee award is found nondischargeable.

7 Plaintiff seeks a determination that the \$33,500 fee award is nondischargeable under 11  
8 U.S.C. § 523(a)(5), (6), and (15). I determine that the fee award is nondischargeable under section  
9 523(a)(5), because it is an obligation owed to a former spouse for support of Debtor's child. There  
10 is no need to address the other theories urged by Plaintiff.

11 The December 16, 1996 family court order containing the fee award indicates that the  
12 majority of fees in question were incurred in the course of the custody dispute. Plaintiff's state court  
13 counsel testified at trial that 90 percent of his fees were incurred in the child custody dispute.  
14 Debtor submitted no contrary evidence.

15 I determine that the portion of the fee award related to the custody dispute is a child support  
16 obligation subject to section 523(a)(5), under the reasoning adopted by the Fifth Circuit in In re  
17 Dvorak, 986 F.2d 940 (5th Cir. 1993). Dvorak held that attorneys fees awarded to a spouse in  
18 connection with a post-divorce child custody dispute are in the nature of a child support obligation  
19 because the fees are incurred "clearly for the [child's] benefit and support, as the purpose of the  
20 hearing was to determine who could provide the best home for her." Id. at 941. Accord In re Jones,  
21 9 F.3d 878, 881-82 (10th Cir. 1993), In re Peters, 964 F.2d 166, 167 (2d Cir. 1992); In re Ratcliff,  
22 195 B.R. 466, 468 (Bankr. C.D. Cal. 1996). See generally In re Chang, 210 B.R. 578, 582 n.15  
23 (BAP 9th Cir. 1997) (dictum noting that majority rule is that such fees are in the nature of support).  
24 Contra Adams v. Zentz, 963 F.2d 197, 199 (8th Cir. 1992).

25  
26  
27 **MEMORANDUM**

1           Ninety percent (30,150) of the \$33,500 fee award is nondischargeable. Plaintiff's judgment  
2   lien is preserved to secure repayment of the nondischargeable portion of the underlying obligation.  
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5   Dated \_\_\_\_\_

\_\_\_\_\_  
6   Thomas E. Carlson  
7   United States Bankruptcy Judge  
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27   **MEMORANDUM**